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10 TREASURE GARDEN, INC.

11
12 IN THE UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 TREASURE GARDEN, INC., a
16 California Corporation,

17 Plaintiff,

18 v.

19 RED STAR TRADERS, LLC, a Utah
20 Limited Liability Company, and
21 COSTCO WHOLESALE
22 CORPORATION, a Washington
23 corporation, and DOES 1 through 10,
24 inclusive,

25 Defendants.

CASE NO. CV12-08577 SJO (JEMx)

JOINT MOTION FOR
RECONSIDERATION RE: COURT
ORDER OF DECEMBER 7, 2012 (Dkt.
No. 12)

INTRODUCTION

The parties Treasure Garden, Inc. ("TG"), Red Star Traders, LLC ("Red Star") and Costco Wholesale Corporation ("Costco") (collectively "the Parties") jointly present this motion respectfully asking the Court to reconsider its December 7, 2012 Order denying the Parties' request to extend the time for Defendants to respond to the complaint. Good cause exists to request this reconsideration and to grant the parties' requested extension. The Parties are actively attempting to settle this litigation as well as other related pending litigations between them. Indeed, on November 28, 2012, the Parties and Wand Li entered into a settlement and agreement in one of the related actions. During that settlement conference, conducted by the Honorable Magistrate Judge Jay C. Gandhi, the Parties agreed, as part of their negotiated settlement, to a stand-down on the remaining related litigations including the present action before this Court so that the principals of the Parties to this litigation could meet in person to pursue settlement on all disputes including the present action. The meeting of the Parties' principals is set to take place between January 4 – 7, 2013. The Parties and their counsel hope and believe that these discussions will result in settlement of all the Parties' pending disputes. The Parties have also agreed that if their principals are unable to reach settlement, that they will again appear before Judge Gandhi to conduct a settlement

1 conference. The present request for an extension is specifically sought to permit
2 and facilitate settlement.
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4 If the Court denies this request for reconsideration, and again denies the
5 Parties' request for an extension, Defendants' will be forced to respond to the
6 complaint by filing a motion to dismiss and transfer this action in view of a related
7 action between the parties in the United States District Court for the District of
8 Utah that was filed before the present action. Besides expending considerable time
9 and expense by the Parties and the Court in addressing such a motion, Defendants'
10 response could create unnecessary conflict that complicates or frustrates the
11 upcoming settlement events. Therefore, the Parties request the Court to reconsider
12 its December 7, 2012 Order and grant the Parties' request that Defendants'
13 deadline to respond to the complaint be extended to February 26, 2013.
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18 **STATEMENT OF FACTS**

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20 This case is a suit for patent infringement of U.S. Patent Nos. 7,513,479 and
21 7, 7,641,165 collectively, "the Asserted Patents") brought by plaintiff Treasure
22 Garden, Inc. ("TG") against defendants Red Star Traders, LLC ("Red Star") and
23 Costco Wholesale Corporation ("Costco", collectively with Red Star and TG, "the
24 Parties") regarding sales of an outdoor umbrella model commonly known as the
25 Portofino ("Portofino"). TG contends that it is the exclusive licensee of the
26 Patents, as granted by the current owner of the Patents, Oliver Joen-An Ma ("Ma").
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1 Ma is also the president of TG. The inventor of the Patents is Wanda Ying Li
2 (“Li”). Li assigned the rights to the Patents to Ma.
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4 On August 13, 2012, and before this action was filed, Red Star filed a
5 declaratory relief action in the United States District Court for the District of Utah,
6 Central Division, entitled *Red Star Traders, LLC, et al. v. Wanda Li, et al.*, Case
7 No. 12-00787 (the “Utah Action”), seeking a declaration that the Asserted Patents,
8 and an additional third patent currently owned by Ma, are not infringed or are
9 invalid. .
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12 In April of 2011, Li filed a separate action in this Court entitled *Wanda Li v.*
13 *Costco Wholesale Corp., et al.*, CACD Case No. CV11-02996 (assigned to the
14 Honorable Michael W. Fitzgerald, United States District Judge) [the “Li Action”]
15 against Red Star and Costco for alleged patent infringement of patents other than
16 the Asserted Patents. After filing her complaint in the Li Action, Li assigned the
17 rights of these to Ma.
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21 On November 14, 2012, TG filed in this Action a stipulation granting Red
22 Star and Costco a 21-day extension, until December 7, 2012, to respond to TG’s
23 complaint. The purpose of this extension was to allow the parties adequate time to
24 prepare for and participate in a settlement conference in the *Li* Action before
25 United States Magistrate Judge Jay C. Gandhi on November 28, 2012. The
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1 November 28 settlement conference took place and the Parties were successful in
2 reaching a settlement of the Li Action.
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4 On November 28, 2012, at the conclusion of the settlement conference, Li,
5 Ma, Red Star, and Costco entered into a settlement and standstill agreement in the
6 *Li* Action, settling that matter between the parties. The parties expect to file a
7 dismissal with prejudice of the Li Action within a short period of time.
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10 During the November 28th settlement conference, the Parties' also agreed to
11 pursue settlement of this action and the Utah Action. To that end, the Parties
12 further agreed to a standstill agreement to suspend prosecution of the pending
13 actions (*i.e.*, this action and the Utah Action) for a period of 90 days. The parties
14 also agreed that during that period, the principals of the Parties would meet in-
15 person in an attempt to settle the remaining disputes. If that meeting proves
16 unsuccessful, the Parties have further agreed to conduct another settlement
17 conference before Magistrate Judge Jay C. Gandhi before the end of the 90-day
18 standstill.
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23 In accordance with the Parties' agreement, they have already scheduled the
24 in-person meeting between the principals. That meeting will take place the first
25 week of January 2013.
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1 The parties have also requested a 90-day continuance in the Utah Action.
2 This request was granted by Honorable Judge Dale A. Kimball on December 10,
3 2012. A copy of that order is attached hereto.
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5 **ARGUMENT**
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7 In view of the set dates and good faith diligent efforts to pursue settlement of
8 all their disputes, including the present action, the Parties respectfully request that
9 the Court reconsider its December 7, 2012 Order denying the joint stipulation to
10 continue the date for Defendants to file their response to the complaint.
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12 This request is made to permit the parties to continue their ongoing
13 settlement negotiations. This request is not intended to delay proceedings and is
14 made in the hopes the parties will complete settlement within the time requested.
15 None of the Parties is requesting this 90-day extension for the purpose of delaying
16 the resolution of this action. Rather, the Parties request this extension so they may
17 spend their resources and efforts constructively to settle this dispute .
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20 Additionally, the Parties anticipate that if this matter moves forward, there
21 will likely be a dispute between the parties as to where their pending litigations
22 should continue, either in California or Utah. Therefore the Parties further request
23 this extension of time in recognition of the possibility of settling this matter rather
24 than expend the resources of two courts as they determine which court is the
25 proper venue.
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CONCLUSION

Therefore, it is hereby requested by and among TG, Red Star, and Costco, by and through their undersigned attorneys, that the Court reconsider its December 7, 2013 Order denying the Parties' stipulation for extension of time. It is therefore also requested that the Court extend the time within which Red Star and Costco may respond to TG's Complaint 90 days, from November 28, 2012, to and including February 26, 2013.

Dated: December 17, 2012

David and Raymond IP Law Firm

s/A. Justin Lum

A. Justin Lum, Esq.

Attorney for Plaintiff

Dated: December 17, 2012

WORKMAN | NYDEGGER APC

s/ Robert E. Aycock

Robert E. Aycock, Esq.

Attorney for Defendants

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and I am employed in Pasadena, California. I am over the age of 18 and not a party to the within action. My business address is 1005 E. Colorado Blvd., Suite 207, Pasadena, California 91106. On the below execution date I served the within JOINT MOTION FOR RECONSIDERATION RE: COURT ORDER OF DECEMBER 7, 2012 to the parties or their counsel shown below:

Robert E. Aycock, Esq.
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION
60 E SOUTH TEMPLE STE 1000
SALT LAKE CITY, UT 84111
Tele: 949.242.1900
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X (BY ECF NOTIFICATION) I filed this document electronically with PACER/ECF and stated parties received notification by e-mail from the ECF filing system.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 17, 2012 at Pasadena, California.

s/Jeffrey Vien

Jeffrey Vien